

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ANGELICA F. DRAGON AND)
GARY L. DRAGON, her husband)
)
 Plaintiffs,)
)
)
 v.) NOTICE OF REMOVAL
) OF ACTION TO
) FEDERAL COURT
WENDY S. SHEAR, M.D.;)
NANCY L. HASSINGER, M.D.;)
DULUTH CLINIC, LTD.;)
ST. MARY'S MEDICAL CENTER OF DULUTH;)
AND ST. MARY'S/DULUTH CLINIC)
HEALTH SYSTEM,)
)
 Defendants.)

Defendant Wendy S. Shear, M.D., by and through the United States Attorney for the District of Minnesota, hereby gives notice to the Plaintiffs, and to the State Court as follows:

1. Wendy S. Shear, M.D., an employee of the United States, is the named defendant in a civil action now pending in the District Court, Fourth Judicial District, Hennepin County, Minnesota entitled Angelica Dragon, et al. v. Wendy S. Shear, M.D., et al. Trial has not yet commenced.

2. The above-referenced action was commenced against Defendant Shear by receipt of a Summons and Complaint on or about April 12, 2005. Copies of all process and pleadings received by Defendant Shear are attached hereto as Exhibit A.

3. Plaintiffs have alleged a claim for relief allegedly arising from the negligent or wrongful acts or omissions of the Defendant Shear that occurred on May 5, 2004 and the subsequent negligent or wrongful acts of the other Defendants.

4. This notice of removal is filed pursuant to Title 28, United States Code, Section 2679(d)(2), said action in the state court commenced against Defendant Shear being a civil action for money damages sounding in tort against Defendant Shear for personal injuries for the acts or omissions of Defendant Shear on or about May 5, 2004 while she was acting in the course and scope of her employment with the Department of Veterans Affairs, an agency of the United States of America.

5. Title 28, United States Code, Sections 1346(b), 2672, and 2679(b) provide that the exclusive remedy for the negligent or wrongful acts or omissions of an employee of the United States, acting within the scope of his or her employment, shall be an action against the United States under the Federal Tort Claims Act, Title 28, United States Code, Sections 1346(b)(1) and 2671-2680 ("FTCA").

6. Filed contemporaneously with this Notice of Removal is a Certification by the Acting United States Attorney for

the District of Minnesota, Nicole A. Engisch, that Defendant Shear was acting within the scope of her federal employment with the Department of Veterans Affairs at the time of the incident of May 5, 2004 alleged in the complaint.

7. Pursuant to 28 U.S.C. § 2679(d)(2), the Certification conclusively establishes scope of employment for the purposes of removal.

8. Accordingly, this action must be deemed to be an action against the United States and is therefore removed pursuant to 28 U.S.C. § 2679(d)(2).

WHEREFORE, notice is hereby given that the said action is removed from the state court into this Court for trial or such other determination as this Court may make regarding the action in accordance with its jurisdictional limits under 28 U.S.C. §§ 2679(d)(2), 1346(b), 2672, 2679, 1441, 1442, and 1446.

Dated: June 9, 2008

FRANK J. MAGILL, JR.
Acting United States Attorney
s/ Friedrich A.P. Siekert

BY: FRIEDRICH A. P. SIEKERT
Assistant U.S. Attorney
Attorney ID No. 142013
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600

STATE OF MINNESOTA)
) ss. AFFIDAVIT
COUNTY OF HENNEPIN)

FRIEDRICH A.P. SIEKERT, being duly sworn, deposes and says that he is an Assistant United States Attorney for the District of Minnesota and represents Defendant Mary S. Shear, M.D. herein; that he has read the foregoing notice and knows the contents thereof; that the same is true of his own knowledge, except as to any matters stated therein on information and belief and as to those matters he believes them to be true.

Date: June 9, 2008

s/ Friedrich A.P. Siekert
FRIEDRICH A.P. SIEKERT
Assistant United States Attorney

Subscribed and Sworn to Before Me

This 9th Day of June, 2008.

s/ Karen M. Malikowski
NOTARY